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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,433	11/07/2006	Malcolm Bicknell McInnes	30276/04005	2394
24024 7590 10/30/2008 CALFEE HALTER & GRISWOLD, LLP 800 SUPERIOR AVENUE SUITE 1400 CLEVELAND, OH 44114				
EXAMINER BELLAMY, TAMIKO D				
ART UNIT 2856		PAPER NUMBER		
NOTIFICATION DATE 10/30/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ipdocket@calfee.com  
dcunin@calfee.com

# Office Action Summary

**Application No.**

10/576,433

**Applicant(s)**

MCINNES ET AL.

**Examiner**

TAMIKO D. BELLAMY

**Art Unit**

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 April 2006.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-14 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 20 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/CIS)  
Paper No(s)/Mail Date 6/19/06  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 10 recites the limitation "the first receptacle means and the second receptacle means" in lines 2-4. There is insufficient antecedent basis for this limitation in the claim. Claim 1 only discloses a **receptacle means**.
3. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The words "**described with reference to the accompanying drawings**" are vague and/or unclear. No specific limitations are claimed.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 7-10, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Thorsten (2,076,188).

Re claim 1, as depicted in fig. 3, Thorsten discloses a housing (e.g., crusher housing 5) and a delivery opening in the upper end (e.g., removable hood 20 covers opening) of housing (20) (Pg. 2, 1<sup>st</sup> Col., lines 19-25). Thorsten discloses sampling material (Pg. 1, 1<sup>st</sup> Col., lines 1-4). Thorsten discloses a deflector (24) within the housing (5) having an upper end located below the delivery opening and having an angled wall that deflects material. Thorsten discloses a receiving means (e.g. See fig. 3, the adjustable gate 57 having sidewall portions) towards the lower edge of the deflector (24).

Thorsten discloses the receptacle means (e.g., gate 57) having an opening (56) at its lower end through which the sample passes (Pg. 3, 2<sup>nd</sup> Col., lines 54-63). Thorsten discloses a means for moving (e.g., motor 14) (Pg. 2, 1<sup>st</sup> Col., lines 3-11; Pg. 4, 1<sup>st</sup> Col., lines 5-7). Thorsten discloses a collecting means (e.g., combination of chute (47) and receiver (49), conical hopper 34, opening (40), and two receiving containers (43)) beneath the receptacle means (e.g., gate (57) with side walls) (Pg. 3, 2<sup>nd</sup> Col., lines 72-75). Thorsten discloses a waste opening (e.g., opening at lower end of chute (47)) at lower end of housing (e.g., crusher housing 5) (Pg. 3, 1<sup>st</sup> Col., lines 40-43; 2<sup>nd</sup> Col., lines 72-75).

Re claim 2, as depicted in fig. 3, Thorsten discloses the deflector walls (24) diverge downwardly.

Re claim 3, as depicted in fig. 3, Thorsten discloses the deflector (24) is conically shaped.

Re claim 4, as depicted in fig. 3, Thorsten discloses the deflector means (e.g., gate (57) with side walls) is secured to the lower peripheral edge of the deflector (24). Also note the plurality of gates on deflector (24) is located at a lower portion (e.g., lower end of diverging wall) of the deflector. Drive means are used to rotate both the deflector (24) and the receptacle means (57).

Re claim 7, as depicted in fig. 3, Thorsten discloses the collection means (e.g., combination of chute (47) and receiver (49), conical hopper 34, and two receiving containers (43)) comprises a funnel (34) located beneath the range of movement of the

receptacle means (e.g., gate (57) attached to rotating deflector (24)) having a discharge end (e.g., opening 40) located outside of the housing (5).

Re claim 8, as depicted in fig. 3, Thorsten discloses the receptacle means (e.g., gate (57) having side walls) defining a rectilinear opening. Thorsten discloses the walls of the receptacle (e.g., gate (57) with side walls) converging (See inner walls of gate that is smaller in diameter toward the opening (56)).

Re claims 9 and 10, as depicted in fig. 3, Thorsten discloses two receptacle containers (e.g., gate (57) with side walls and corresponding gates on deflector (24) (Pg. 3, 2<sup>nd</sup> Col., lines 54-56).

Re claim 13, as depicted in fig. 3, Thorsten discloses a sampling collecting apparatus.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5, 6, 11, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thorsten (2,076,188).

Re claim 5, as depicted in fig. 3, Thorsten discloses a driving means (e.g., motor 14). While Thorsten does not specifically disclose that the driving means is a hydraulic motor, Thorsten specifically states (See Pg. 2, 1<sup>st</sup> Col., lines 3-11) that any other suitable drive arrangement may be substituted. This teaching clearly infers and/or suggests substituting

a hydraulic motor (14) in place of the gear-belt pulley type motor (14) taught by Thorsten. Therefore, to employ Thorsten with a hydraulic motor would have been obvious to one of ordinary skill in the art at the time of the invention since this reference explicitly teaches using other drive arrangements.

Re claims 6 and 14, as depicted in fig. 3, Thorsten discloses the receptacle (e.g., gate (57) with side walls) attached to the deflector (24, 55). While Thorsten does not specifically disclose that the receptacle is removably attached, one having ordinary skill in the art knows that through disassembly of the apparatus the receptacle (57) is capable of being removed. Therefore, to employ Thorsten on removing the receptacle means would have been obvious to one of ordinary skill in the art at the time of the invention since this reference explicitly attaching a receptacle through an assembly process to the deflector.

Re claims 11 and 12, as depicted in fig. 3, Thorsten discloses a first collection means (e.g., chute 47). Thorsten discloses a second collection means (e.g., combination of conical hopper 34 over openings (40)). While Thorsten does not specifically disclose the second collection means is located centrally within the first collection means, the arrangement of the components is a design choice that is clearly in the purview of one having ordinary skill in the art. Evidence of this can be found in Thorsten, wherein the first collection means (47) is relocated to the other side of the housing (5) (See figs. 1 and 3). Thorsten also discloses that it is understood that various changes and modifications may be made within the contemplation of the invention (Pg. 4, 1st Col, lines 20-24). Therefore, to employ Thorsten on centering a second collection means within a first

collection means would have been obvious to one of ordinary skill in the art at the time of the invention since this reference explicitly various changes made be made.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure.

The following patents are cited **by the applicant** to further show the state of art with respect to a rotating deflector (e.g., distribution cone 11) having a receptacle (e.g., sampling chute 14) that is attached the lower edge of the deflector (11) and rotates with the deflector (Col. 4, lines 54-57) :

U.S. Pat. No. 3, 585,864) as to Dellyes.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAMIKO D. BELLAMY whose telephone number is (571)272-2190. The examiner can normally be reached on Monday - Friday 8:00 AM to 4:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tamiko Bellamy  
/TB/  
October 24, 2008

/Daniel S. Larkin/

Primary Examiner, Art Unit 2856